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IN THE

Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, and the BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF *AMICUS CURIAE* MICHIGAN BLACK LAW ALUMNI SOCIETY IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE [1]

The Michigan Black Law Alumni Society ("MBLAS") is an organization of graduates of the University of Michigan

[1] No counsel for any party in this litigation was involved in the preparation of this brief. As further set forth in footnote 3, *infra*, this brief is largely based on a study conducted between 1997 and 2000 by University of Michigan Professors Richard O. Lempert and David L. Chambers, and Senior Research Associate Terry K. Adams. Professor Chambers and Mr. Adams worked with counsel for *amicus curiae* Michigan Black Law Alumni Society in the preparation of this brief. The parties to this case have consented to the filing of *amicus* briefs in support of any party.

Law School ("Law School") dedicated to furthering the interests of minority and underprivileged communities. Since its organization in 1975, MBLAS's activities have included hosting panel discussions, job fairs, student receptions, and seminars at the Law School; working directly with the Law School dean and other officials at the Law School and the University to advance issues related to MBLAS's purposes; and otherwise serving as a focal point and forum for service, communication and fellowship relating to minority interests among alumni, faculty, and students of the Law School, as well as the public at large.

MBLAS clearly has a direct interest in this litigation. As further set forth in the brief that follows, the great majority of the Law School's minority graduates were admitted through the race-conscious program at issue in this case or predecessor programs that similarly treated the desire to promote racial diversity as a factor in admissions. MBLAS believes that adopting the position advanced by petitioners in this litigation—that the Law School's race-conscious admissions program is unconstitutional—would have a substantial, negative impact on the organization's efforts to further its basic goals.

Because of the importance of this issue to *amicus* and its members, we respectfully submit this brief to assist the Court in the resolution of this litigation.

PRELIMINARY STATEMENT

This brief ties the results of a published empirical study ("Michigan Law School Study," or "Study") comparing the law school and career experiences of minority and white alumni of the University of Michigan Law School to two central legal issues in this case: (1) the strength of the government interests at stake; and (2) the degree to which the Law School's admissions system is tailored to advancing those interests. The Study was conducted between 1997 and

2000 by University of Michigan Professors Richard O. Lempert and David L. Chambers, and Senior Research Associate Terry K. Adams,[2] and is the largest ever undertaken comparing the experiences of minority and white lawyers.[3]

Planning for the Study began in 1995, two years prior to the filing of the litigation now before this Court. In 1997, Lempert, Chambers and Adams mailed a seven-page Professional Development Survey to all living African-American, Latino and Native American graduates of the Law School from the classes of 1970 through 1996, a total of 1,060 persons, as well as to a representative sample of 935 white graduates from the same years. Of the minority graduates, 704 were African-American, 297 were Latino, and 59 were Native-American. The great majority of the minority graduates surveyed were admitted to the Law School through the race-conscious program at issue in this case or predecessor programs that similarly treated the desire to

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[2] Professor Lempert is the Eric Stein Distinguished University Professor of Law and Sociology at the University of Michigan and a former chair of the University's Department of Sociology. Professor Chambers is the Wade H. McCree, Jr., Collegiate Professor of Law at the University of Michigan. Mr. Adams is Senior Research Associate at the University of Michigan Law School and at the Institute for Social Research, University of Michigan. Professor Chambers and Mr. Adams have surveyed the graduates of the University of Michigan Law School alumni for over twenty consecutive years.

[3] The results of the Study were published in "Law and Social Inquiry," the peer-reviewed journal of the American Bar Foundation, in an issue primarily devoted to the Study and four commentaries on it by sociologists and law professors. *See Michigan's Minority Graduates in Practice: The River Runs Through the Law School*, 25 Law and Social Inquiry 395 (2000) ("*Michigan's Minority Graduates*"). A shorter version of the study appears in the University of Michigan Law School's alumni publication, "Law Quadrangle Notes," as *Doing Well and Doing Good: The Careers of Minority and White Graduates of the University of Michigan Law School, 1970-1996* (Summer 1999) ("*Doing Well and Doing Good*").

promote racial diversity as a factor in admissions.[4] The survey included questions concerning both graduates' experiences during law school and their professional experiences after graduation. The questions were drafted in such a way that a person answering them would not detect that race was an important focus of the inquiry. Fifty-one percent of minority graduates and 62 percent of white graduates responded.[5]

The study is part of the record in this litigation,[6] but none of the parties to the case brings out its full relevance to the issues before the Court. MBLAS therefore respectfully submits this brief in support of the respondent.

SUMMARY OF ARGUMENT

Central to this case are two legal issues: (1) whether considering race and ethnicity in law school admissions in order to increase student diversity serves a "compelling" state interest or interests; and (2) whether the Law School's admissions system is properly "tailored" to advancing such interest or interests. The conclusions of the Study presented in this brief bear directly on those issues.

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[4] Some, but not all, of the analyses presented below were conducted a second time on a sample from which the small number of minority students who might have been admitted without affirmative action were excluded. The results of these replications, which focus on future income, career satisfaction and service, are essentially the same as the results in the full sample. This confirms that the Study results were not distorted by the fact that the sample included a small number of minority respondents who might have attended Michigan without the benefit of race conscious affirmative action.

[5] Information in law school records and post-law school data sources about respondents and non-respondents indicates that despite this difference between the minority and white response rates, the respondents were a representative sampling of the minority and white graduates of the law school as a whole. *See Michigan's Minority Graduates* at 404-07.

[6] Ct. App. JA 6195-6305.

Justice Powell's controlling decision in *Bakke* found that the State's interest in a diverse student body is "compelling" in the context of a university's admissions program. Indeed, a broad consensus exists to the effect that diversity among students contributes significantly to a quality education, and the record in this case is replete with evidence of that consensus. The Study presented in this brief adds an important voice to that chorus—the voice of Michigan law graduates themselves, who broadly and increasingly believe that diversity in the classroom significantly contributed to their own educational experiences.

While Justice Powell's *Bakke* opinion found that diversity in education could be a compelling state interest, he nonetheless concluded that the admissions program at issue there was not "narrowly tailored" because it had not been shown to advance the State's asserted interest in achieving racial diversity while also selecting students who were well qualified. Justice Powell endorsed the "Harvard plan," which did not set aside a specific number of seats for minority applicants, but instead used race as one factor among many to select a diverse student body consisting entirely of qualified applicants. Like the Harvard plan, the Law School admissions policy does not erect a quota, and its central goal is to select students who will become outstanding lawyers. The Study amply demonstrates that, as a result of the admissions process challenged here, the Law School has been able to secure and train a group of minority students who are every bit as able as their white classmates by the most relevant metric of all: their achievements as attorneys in the practice of law.

Finally, while diversity in the classroom is a compelling state interest that Michigan's race-conscious admissions program is narrowly tailored to advance, it is not the only one. In *Bakke*, Justice Powell also noted that improving the delivery of services to historically underserved minorities can also be a "compelling" state interest. Justice Powell found,

however, that the petitioner in *Bakke* had failed to show that the race-conscious admissions program at issue there would actually advance the State's interest in increasing the availability of quality services for minority communities. The Study presented in this brief makes the showing that the petitioner in *Bakke* did not, demonstrating that minorities selected by the Law School through its admissions program go on after graduation to serve minority clients in far greater numbers than their white classmates.

ARGUMENT

I. RACIAL DIVERSITY IS A COMPELLING INTEREST FOR A LAW SCHOOL, AND THE STUDY SHOWS THAT BOTH WHITE AND MINORITY GRADUATES BELIEVE THAT THEY PROFIT FROM RACIAL DIVERSITY IN THE CLASSROOM.

Justice Powell's decisive opinion in *Regents of California v. Bakke*, 438 U.S. 265 (1978), found that the State's interest in a diverse student body "is *compelling* in the context of a university's admission program," *id.* at 314 (emphasis added), because "our tradition and experience . . . [indicate] that the contribution of diversity" to producing a quality education is important. *Id.* at 313. Similarly, although Justice O'Connor did not speak for the Court in *Wygant v. Jackson Board of Education*, 476 U.S. 267, 286 (1986), her separate opinion expressly acknowledged that "a state interest in the promotion of racial diversity has been found sufficiently 'compelling' at least in the context of higher education, to support the use of racial considerations in furthering that interest."

Justice Powell's opinion in *Bakke* correctly emphasized that his conclusion that diversity among students contributes significantly to a quality education reflects a broad consensus: "[T]he atmosphere of speculation, experiment and creation—so essential to the quality of higher education—is *widely*

believed to be promoted by a diverse student body." 438 U.S. at 312 (internal quotation marks and citation omitted; emphasis added). The record in this litigation is replete with evidence of that consensus, including voluminous evidence from nationally recognized experts, and views expressed by *amici* as diverse as the American Bar Association, the Clinical Legal Education Association, a group of Fortune 500 companies, and the United Auto Workers. Significantly, however, the Study presented in this brief adds an additional (and important) voice to that chorus—the voice of Michigan law graduates themselves.

The Study asked graduates how much they had benefited from different elements of the classroom experience. Those aspects included, among others, the intellectual abilities of their classmates, being called upon in class, ideological diversity within the classroom, gender diversity within the classroom, and racial and ethnic diversity within the classroom. Respondents were asked to rate the value of these factors to their classroom experience on a seven-point scale, where 1 was "none" and 7 was "a great deal."

Strikingly, the responses indicated that nearly *all* students, white and black, male and female, regarded racial diversity as being of some value to their classroom education. As reflected in Table 1 (directly below), a clear majority of the minority graduates (from all decades) believed that racial diversity in the classroom reached the relatively high threshold of "5" on the 7-point scale. And by the 1990s, fully half of white graduates, male and female, had come to regard the ethnic diversity of the classroom as having made a sufficiently important contribution to their law school experiences to rate a 5, 6, or 7 on the 7-point scale.

Table 1

Minority and White Graduates of the University of Michigan Law School Classes of 1970-1996
Importance of Ethnic and Racial Diversity to Classroom Experience [7]

	Minority Graduates	White Graduates
Importance placed on ethnic and racial diversity within class to classroom experience—percent recording themselves as 5, 6 or 7 on scale of 7 where 1 was "none" and 7 "a great deal"		
Graduates of 1970-1979	65.0%	24.8%
Graduates of 1980-1989	60.6%	32.5%
Graduates of 1990-1996	57.3%	50.0%

Notably, the increase over time in white students' appreciation of the value of ethnic diversity in the classroom parallels the increase in the proportion of minority students in the Law School—as minority student numbers increased, so too did the value placed by whites on diversity. Only in the 1990s did the number of minorities, including Asian-Americans, reach twenty percent of the student body; as the Table indicates, the 1990s also witnessed a considerable jump in the value white students placed on diversity.[8]

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[7] See *Michigan's Minority Graduates* at 413, Table 5A.

[8] The Law School has argued in this litigation that the benefits of diversity in education cannot be realized unless minorities constitute a certain "critical mass" of the student body. Minority students may be reluctant to speak out—and so improve the educational experience for all—if they perceive themselves as isolated "tokens." The correlation between minority student numbers and the value placed on diversity by white students suggests that "critical mass" may also be important for a different reason: white students may come to appreciate the value of diversity to a greater extent in an environment in which they are exposed to more than "token" diversity.

The Michigan study thus straightforwardly supports the broad consensus that racial and ethnic diversity is a compelling government interest because it makes an important contribution to the quality of the educational experience—graduates themselves, in large and growing numbers, believe that diversity substantially contributed to their own educational experiences at the Law School. This conclusion is also confirmed by a later study of students at Harvard and Michigan, which indicates that not just as alumni but also while in law school, both whites and minorities believe that they benefit from the racial diversity of their classrooms.[9] Schools have a compelling interest in sustaining an aspect of their educational programs that the majority of graduates look back on as having enhanced their educational experience. The results of the Study thus complement the professional opinions of educators that racial diversity plays an important role in classroom education.

II. MICHIGAN LAW SCHOOL MINORITY GRADUATES AND WHITE GRADUATES HAVE CLOSELY SIMILAR CAREER ACHIEVEMENTS, INDICATING THAT THE LAW SCHOOL'S RACE-CONSCIOUS ADMISSIONS PROGRAM ADVANCES ITS CORE ADMISSIONS GOAL OF PRODUCING OUTSTANDING LAWYERS.

The opening section of this brief offers evidence that the Law School's race-conscious admissions program serves a compelling state interest by improving legal education through diversity in the classroom. Hovering over all discussions of affirmative action, however, is the suggestion that this compelling interest is undercut if minority students

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[9] Gary Orfield and Dean Whitla, *Diversity and Legal Education: Student Experiences in Leading Law Schools*, in DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION (Gary Orfield and Michael Kurlaender, eds., Harvard Publishing Group, 2001).

whose race or ethnicity is taken into account in an admissions process develop into less able professionals than their white counterparts. The Michigan Law School Study demonstrates that the premise underlying this concern is simply false: the actual legal careers of the Law School's minority law school graduates accepted through the Law School's race-conscious admissions program illustrate that they are fully as capable as their white classmates.

This fact is directly relevant to the discussion of narrow tailoring in Justice Powell's *Bakke* decision and the principal dissenting opinion below. In *Bakke*, Justice Powell concluded that the "set aside" or quota approach employed by the Davis Medical School admissions program was not narrowly tailored to achieve the State's goals in part because "[t]he diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element." *Bakke*, 328 U.S. at 315. Justice Powell contrasted the Davis quota system with the Harvard plan, which used race as a "plus" factor to "'choose among thousands of applicants who are not only "admissible" academically but have other strong qualities.'"[10] Michigan Law School similarly uses race as one factor among many, and its goal is to select students who "not only have a substantial promise for success in law school, but also have a strong likelihood of succeeding in the practice of law and contributing in diverse ways to the well-being of others . . . . [including becoming] esteemed legal practitioners, leaders of the American bar, significant contributors to legal scholarship and/or selfless contributors to the public interest."[11] The Study shows that

[10] *Id.* at 316, *quoting* App. to Brief for Columbia University, Harvard University, Stanford University, and the University of Pennsylvania, as *Amici Curiae* 2-3.

[11] Report and Recommendations of the Admissions Committee 1 (University of Michigan Law School; adopted April 29, 1992).

Michigan's admissions practices have, in fact, achieved that goal of training a diverse student body to succeed at a wide variety of post-graduation pursuits.

The Study is also relevant to the mistaken argument of the dissent below that the Law School's plan is not narrowly tailored because—contrary to Michigan's allegedly "empty claim" that it "insure[s] that 'all its students are qualified'"[12] —it gives too much of an advantage to minority applicants in terms of LSAT scores and GPAs.[13] The dissent fails to recognize that LSAT scores and GPAs are not ends in themselves, but means toward accomplishing the core goal set out in the Law School's policy—that of *identifying qualified applicants*. And the ultimate test of whether a law school applicant is "qualified" is, of course, whether the applicant goes on to become an outstanding lawyer. The Study shows that, contrary to the view expressed in the dissenting opinion, the Law School ensures that the minority students it admits are well qualified, and do go on to become outstanding lawyers.

Of the students who entered the University of Michigan law school between 1983 and 1993, 96.0 percent of minority students and 98.5 percent of white students graduated with a J.D. degree.[14] Upon graduation, nearly all minority and white graduates take and pass a bar exam and join the bar of at least one state—96 percent of minority graduates and 98 percent of white graduates who responded to the Michigan survey. Thus the overwhelming majority of both minority and white persons who matriculate at the University of Michigan Law School graduate and enter the legal profession.

[12] *Id.*

[13] *See Grutter v. Bollinger*, 288 F.3d 732, 798 (2002) (Judge Boggs, dissenting).

[14] *Michigan's Minority Graduates* at page 422. For the years prior to 1980, race information is unavailable for students who began but did not finish law school.

After the bar exam white and minority graduates embark on similar sorts of legal career paths. Table 2 shows where the minority and white graduates between 1980 and 1996 took their first jobs after finishing law school.[15] As the table reveals, the initial job experiences of the minority and white graduates are similar. Slightly less than half of minority graduates and slightly more than half of white graduates began their careers in firms of 51 or more lawyers. One major difference between the career patterns of whites and minorities is that a substantially higher proportion of minority graduates began their careers in government, a pattern that is also reported by those who have studied the graduates of other law schools.[16]

[15] The figures for graduates of the 1970s are somewhat different. A far smaller proportion of minority than white graduates entered private practice, and many more entered government or other public interest work. This may reflect the fact that in the 1970s there were private practice sectors that, as a result of lingering racism, remained largely closed to blacks. Minority graduates of the 1970s are the only group examined in the Study who, over time, showed a net movement into private practice, and an extraordinarily high proportion of graduates of this decade today occupy judgeships or other public leadership positions.

[16] David B. Wilkins et al., HARVARD LAW SCHOOL REPORT ON THE STATE OF BLACK ALUMNI, 1869-2000 32 (Harvard College, 2002).

Table 2

Minority and White Graduates of the University of Michigan Law School Classes of 1980-1996
First Employment Setting after Law School[17]

	Minority Graduates (n=392)	White Graduates (n=309)
Percent with Judicial Clerkships	14.5%	18.7%
First Job (after any Judicial Clerkship)		
Private Practice	70.4%	83.8%
(Firm of 10 or fewer lawyers)	(10.2%)	(8.4%)
(Firm of 11-50 lawyers)	(14.8%)	(19.1%)
(Firm of 51 or more lawyers)	(45.4%)	(56.3%)
Government	14.5%	3.5%
Legal Services, Public Defender, Public Interest Firm	4.8%	4.5%

Large law firms are widely regarded as among the most demanding of settings in which young lawyers work. In an attempt to gauge whether minority and white associates differed in their success in their first jobs, the survey inquired how many years respondents had worked at their first jobs. Most graduates of the classes of 1990-1996 who began in large firms had not been out of law school long enough at the time of the 1997 survey for a meaningful assessment, but, among the graduates of the 1980s who took a job in a firm of 51 or more lawyers, minority graduates remained an average of 4.1 years and white graduates an average of 4.7 years. This small difference is not statistically significant.[18]

Table 3 reports on the settings in which Law School graduates from the classes of 1980 through 1996 were

[17] Based on a recalculation of the figures in *Michigan's Minority Graduates* at 424, 425, Tables 10 & 11.

[18] *See id.* at 426.

working at the time of the survey in 1997.[19] By that point, many had been out of school for over 10 years. As the table reveals, among both minority and white lawyers there was movement from private practice to other sectors, but private practice remained the principal work setting for both minority and white graduates. For those not working in private practice, more minority than white graduates continued to work in government, while more whites than minorities had shifted to working in business (in general counsel's offices or as businesspersons). Still, what is most striking are the similarities in the career paths of the minority and white graduates.

Table 3

Minority and White Graduates of the University of Michigan Law School Classes of 1980-1996
Employment Setting at Time of Survey in 1997[20]

	Minority Graduates (n=392)	White Graduates (n=309)
Work Setting at Time of Survey in 1997		
Private Practice	52.9%	57.8%
(Firm of 10 or fewer lawyers)	(18.2%)	(12.5%)
(Firm of 11-50 lawyers)	(11.4%)	(15.3%)
(Firm of 51 or more lawyers)	(23.3%)	(30.0%)
Government	19.5%	9.6%
Legal Services, Public Defender, Public Interest Firm	3.7%	2.6%
Business (as lawyer or non-lawyer)	13.2%	18.2%
Other	10.7%	11.8%

[19] *Id.* at 427-31.

[20] Based on a recalculation of the figures in *Michigan's Minority Graduates* at 428, 431, Tables 12 & 14.

Roughly six percent of the minorities in the classes surveyed work in the field of education. (They are among those in the classification "other" in Table 3.) Most of this group—25 in all—are teachers of law. The University of Michigan Law School is among the American law schools training the largest numbers of American law professors. At the beginning of the 1970s, there were almost no African-American or Latino law teachers at predominately white law schools in the United States.[21] Together with the minority graduates of the other teacher-producing schools, the Law School's minority graduates have played an important role in bringing minority group members onto the faculties of law schools in the United States.

In addition to questions about work settings, the survey also included several other questions designed to measure graduates' career achievements. Because career success has many elements, three separate indicators were examined: career satisfaction, job income, and service to society and the legal profession.

Table 4 reports on overall career satisfaction, an indirect indication of how well a person is doing. The survey asked respondents about their satisfaction with seven aspects of their careers (solving problems for clients, prestige in the community, relationships with co-workers, etc.), as well as a question about their overall career satisfaction. Closely similar percentages of each decade's graduates put themselves into categories 5, 6 or 7 on a 7-point scale with regard to their overall career satisfaction. Among each decade's graduates, slightly more whites than minorities expressed substantial satisfaction, but in none of the decades was the difference statistically significant. Differences in the

[21] David Chambers, *A Report: Minority-Group Persons in Law School Teaching*, in Newsletter of the Society of American Law Teachers, Vol. 1982, No. 1, Nov. 1982.

elements of career satisfaction were also for the most part minor and almost always insignificant.[22] On a few dimensions minorities were more satisfied (*e.g.*, in some decades, regarding the value of their work to society) and on others whites were more satisfied (*e.g.*, in some decades, regarding their relationships with co-workers). The lack of relationship between minority status and career satisfaction was confirmed through multivariate analysis.[23]

Table 4
Minority and White Graduates of the University of Michigan
Law School
Classes of 1970-1996
Career Satisfaction[24]

	Minority Graduates	White Graduates
Satisfaction with Careers Overall—Percent rating themselves as 5, 6 or 7 on scale of 7		
Graduates of 1970-1979	79.2%	81.8%
Graduates of 1980-1989	75.5%	79.4%
Graduates of 1990-1996	71.2%	76.4%

Earnings are another measure of achievement. Table 5 reports the mean earnings in 1997 by decade of graduation of the minority and white graduates. The mean earnings of both white and minority graduates from all decades are high in comparison to American family incomes in general.[25] As the table indicates, among the graduates of the most recent decade, the 1990s, there is virtually no difference in average

[22] *See Michigan's Minority Graduates* at 448-50, Tables 22A & 22B.

[23] Richard O. Lempert, *et al.*, *Michigan's Minority Graduates in Practice: Answers to Methodological Queries*, 25 Law & Social Inquiry 589-90 (2000).

[24] *Michigan's Minority Graduates* at 445.

[25] *Id.* at 447.

earnings between the white and minority graduates. Among the graduates of the 1970s and 1980s, white graduates do earn somewhat more than minority graduates, but the difference is remarkably small considering that a higher percentage of whites than minorities work in large firms and in businesses, the two highest paying settings. Comparing whites and minorities working in the same settings—in the same size firms, or in government, or in business—few statistically significant differences appear between the earnings of minority and white graduates of any decade, and regression analysis reveals that after controlling for time since graduation, gender, and age entering law school, the differences entirely disappear.[26]

Table 5
Minority and White Graduates of the University of Michigan
Law School
Classes of 1970-1996
Earnings[27]

	Minority Graduates	White Graduates
Mean Earnings		
Graduates of 1970-1979	$141,419	$177,725
Graduates of 1980-1989	$104,513	$127,716
Graduates of 1990-1996	$67,865	$68,320

Some critics of affirmative action might speculate that the high earnings of Michigan's minority graduates are due in part to affirmative action in post-law school settings, because employers hire minority persons who are less competent than available majority candidates. The Study was not designed to test this assertion, but it appears implausible on its face as to

[26] *Id.* at 453.

[27] *See id.*, Table 24.

these Michigan graduates. A large majority of Michigan's graduates of the 1970s and 1980s have changed jobs or even job sectors one or more times. Employers hiring people who have worked for others can assess their actual practice competence, and it seems unlikely that an employer would intentionally choose to hire and pay six figure incomes to people who had not performed well in their previous jobs.

Moreover, in one setting examined in the Study—solo practice and firms of ten or fewer lawyers—high earnings without high competence are particularly unlikely because earnings there are so closely related to individual achievement. The minority lawyers from the 1970s who are in solo practice or in firms of ten or fewer lawyers had average incomes in 1996 of $154,400.[28] Their median income was $95,000. The minority graduates of the 1980s in solo practice and in small firms averaged $78,500, with a median of $76,000. White graduates from the 1970s in solo practice and small firms average somewhat *less* than their minority classmates; white graduates from the 1980s average slightly more. Hence, the solo and small firm minority practitioners have amply demonstrated their competence in the marketplace.

Another conventional measure of success in law practice is the extent to which graduates have become partners in law firms, or have become supervisory or managing attorneys in non-firm settings. In this respect, Michigan's minority graduates have succeeded very well. Table 6 provides information for white and minority graduates in each of three decades in two broad types of law practice settings.

[28] *See Doing Well and Doing Good* at 70.

Table 6

Minority and White Graduates of the University of Michigan Law School Classes of 1970-1996
Status in Places of Employment [29]

Partnership among those at Law Firms	Minority Graduates	White Graduates
Graduates of 1970-1979	91.1%	96.0%
Graduates of 1980-1989	72.6%	80.0%
Graduates of 1990-1996	19.0%	13.2%
Supervisory or Managing Attorney in Non-Firm Setting		
Graduates of 1970-1979	64.5%	63.5%
Graduates of 1980-1989	25.0%	30.9%
Graduates of 1990-1996	14.3%	0.0%

Except for the final row, where minority graduates of the 1990s are more likely to have become supervisors to a statistically significant degree, none of the differences between minority and white graduates are statistically significant. Accordingly, by common measures of success within an organization, minority graduates of the Law School have been as highly successful as their white counterparts.

A final yardstick of law graduate achievement measured by the Study—and one that Michigan Law School seeks to advance through its admissions policy and law school activities—is community leadership and community service. Both white and minority graduates of the law school perform a great deal of service, but as Table 7 reveals, in most respects minority graduates show more leadership and perform more service than white graduates. Among each decade's graduates, a somewhat higher proportion of minority than of white graduates serve on at least one non-profit board

[29] *See Michigan's Minority Graduates* at 452, Table 24.

and somewhat more of the minority graduates are involved in electoral politics or non-electoral issue politics. Similarly, except for the graduates of the 1980s, minority graduates in private practice perform more *pro bono* legal services than white graduates. Multivariate analysis confirms the tabular analysis, as a small but statistically significant difference between the amount of service performed by white and minority graduates persists even after other relevant variables are controlled.[30]

Table 7

Minority and White Graduates of the University of Michigan
Law School Classes of 1970-1996
Volunteer Service to Others

	Minority Graduates	White Graduates
Serves on at least one nonprofit board[31]		
Graduates of 1970-1979	60.3%	48.3%
Graduates of 1980-1989	47.6%	34.4%
Graduates of 1990-1996	29.1%	19.2%
Involved in electoral politics or non-electoral issue politics [32]		
Graduates of 1970-1979	40.4%	22.9%
Graduates of 1980-1989	24.1%	17.1%
Graduates of 1990-1996	24.5%	20.8%

[30] *See Michigan's Minority Graduates* at 486-87, Tables 35 & 36.

[31] *See id.* at 458, Table 26.

[32] *Id.*

Table 7 (continued)

Minority and White Graduates of the University of Michigan
Law School Classes of 1970-1996
Volunteer Service to Others

Among private practitioners, average annual hours of pro bono legal work [33]	Minority Graduates	White Graduates
Graduates of 1970-1979	137	92
Graduates of 1980-1989	105	126
Graduates of 1990-1996	98	57

The many achievements of the minority graduates of the University of Michigan Law School—the settings in which they work, their career satisfaction and earnings, their positions as partners and supervisors, their community service—thus confirm that the Law School's minority graduates are as able as white graduates who matriculated with higher LSAT scores and undergraduate GPAs. The facts about these graduates also demonstrate that the legal profession, legal education, and the communities in which the minority graduates practice also have benefited from the Law's School's race-conscious admissions process.

III. IMPROVING THE DELIVERY OF LEGAL SERVICES TO HISTORICALLY UNDER-REPRESENTED MINORITY GROUPS IS A COMPELLING STATE INTEREST, AND THE STUDY SHOWS THAT MICHIGAN'S MINORITY GRADUATES ARE SUBSTANTIALLY MORE LIKELY THAN ITS WHITE GRADUATES TO SERVE THOSE GROUPS.

Although diversity in the classroom is, as discussed above, a compelling state interest that Michigan's race-conscious admissions program is narrowly tailored to advance, it is not the only one. In *Bakke*, which addressed an admissions

[33] *Id.* at 458, Table 27.

program at the University of California at Davis Medical School, Justice Powell observed that "a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification." *See Bakke*, 438 U.S. at 310. Similarly, in the present case, Michigan's interest in improving the delivery of legal services to historically underserved minority populations is "sufficiently compelling" to support the use of a race-conscious admissions system.

In *Bakke*, however, Justice Powell went on to note that "petitioner has not shown that its preferential classification is likely to have any significant effect on the problem." *Id.* at 311. The Michigan Law School Study presented in this brief directly addresses this evidentiary shortcoming.

The Study asked Law School graduates about the race of individual clients and organizational contact persons that they serve. Responses indicated that most of the clients served by Michigan's minority graduates and white graduates in private practice are white, probably because white people are the majority of Americans and because whites control such a high proportion of the nation's wealth and business. At the same time, however, the Study showed that Michigan's alumni, regardless of race, disproportionately serve clients of their own race to a degree that is plainly statistically significant. In particular, a significantly higher proportion of the clients of the African American graduates are African American than is the case for the white or Latino graduates, and a significantly higher proportion of the clients of the Latino lawyers are Latino than is the case for the African American or white graduates. As Table 8 shows, this pattern holds both for the graduates' individual clients and for their contacts with organizational clients, such as corporations. The difference is especially notable for African-American graduates, over half of whose individual clients are also African-American to a degree that is plainly statistically significant.

Table 8

Minority and White Graduates of the University of Michigan Law School in Private Practice, Classes of 1980-1996
Proportion of Clients From Various Racial/Ethnic Groups [34]

Individual Clients*	Black Clients	Latino Clients	White Clients
Black Graduates	53%	5%	39%
Latino Graduates	11%	29%	53%
White Graduates	14%	5%	77%
Organization Contact Persons**	**Black Contacts**	**Latino Contacts**	**White Contacts**
Black Graduates	25%	2%	73%
Latino Graduates	4%	9%	82%
White Graduates	4%	2%	89%

* of attorneys who spend at least 20 percent of their time serving individuals.

** of attorneys who spend at least 20 percent of their time serving organizations.

From one point of view, this distribution of client services among private practitioners simply illustrates the persistent and regrettable salience of race in American society. From the point of view of the law school and the legal profession, however, the greater service of minority lawyers for minority clients addresses the important goal of helping to assure legal services of high quality to all groups in our society.[35] Put

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[34] *Doing Well and Doing Good* at 69, Table 6.

[35] Justice Powell speculated that a school might be able to devise a race-blind admissions process that would secure matriculants who, upon graduation, would provide the desired level of service to minority clients by giving enormous weight to demonstrated commitment to such service in the application. *Bakke*, 438 U.S. at 311. Such an alternative is unlikely to have a significant impact at the University of Michigan Law School, however, where a demonstrated commitment to serving under-served

simply, if nearly all the graduates of the University of Michigan Law School were white, it is extremely unlikely that anywhere near as many minority clients would be served by the law school's graduates as is the case today.

In short, in addition to supporting the Law School's claim that its admissions program is narrowly tailored to advancing its interest in diversity in the classroom, the Study also shows that that program directly advances the compelling goal of improving legal service to historically underserved minorities.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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groups is already given great weight in reviewing all applications, white and minority. *See* Report and Recommendations of the Admissions Committee (University of Michigan Law School; adopted April 29, 1992).